

Amendment No. 1 to SB1971

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 1971

House Bill No. 1772*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 21, Part 1, is amended by adding the following new section:

(a) As used in this section, "public official" means:

(1) An individual who is a current or retired elected or appointed government official, including a state, county, metropolitan, or municipal official;

(2) An individual who is the head of a division or major unit or department within an agency or office of the executive, judicial, or legislative branch of state, county, metropolitan, or municipal government, regardless of the title of the position, and who, as a substantial part of the individual's duties, provides meaningful input on the development of policy goals or the implementation of policy;

(3) A high-ranking employee within the executive, judicial, or legislative branch of state, county, metropolitan, or municipal government who has a primary responsibility for one (1) or more of the following functions:

- (A) Public information and legislative affairs;
- (B) Fiscal, budget, and audit matters;
- (C) Legal, security, or internal affairs;
- (D) Information technology systems; and

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(E) Human resources;

(4) A first responder, as defined in § 29-34-203; or

(5) A law enforcement officer, as defined in § 39-11-106.

(b)

(1) A public official who is the subject of a lien, encumbrance, or any other document that reasonably constitutes a cloud on the title of a real property interest, filed with the register of any county, may file with the register a notarized affidavit, signed under penalty of perjury, that contains:

(A) A recital designating the type of instrument, office, book, and page number of the instrument;

(B) The affiant's mailing address;

(C) A statement that the affiant is a public official;

(D) A statement that the affiant believes that the document was filed without any reasonable basis or legal cause, and the affiant's factual basis for why the filed document lacks any reasonable basis or legal cause; and

(E) A statement that the affiant is not filing the affidavit contesting any document held by any entity listed in subsection (k).

(2) The secretary of state shall adopt a form of affidavit for use under subdivision (b)(1) and a form of certification for use under subsection (f).

(c) Once an affidavit is filed with the register pursuant to subdivision (b)(1), the register shall indicate on any available indices that the document referenced in subdivision (b)(1)(A) is "Contested - Under Review."

(d)

(1) Within three (3) business days of filing an affidavit filed pursuant to subdivision (b)(1), the public official shall send a copy of the affidavit, by registered or certified mail, with return receipt requested, addressed to the filing party at the address listed on the lien, encumbrance, or other document.

(2) The copy of the affidavit is deemed delivered upon:

(A) Acceptance by the filing party;

(B) A showing that the filing party refused to accept delivery and it is so stated in the return receipt of the United States postal service; or

(C) The United States postal service returning the affidavit as undeliverable or unclaimed.

(3) The refusal or failure of the filing party to accept delivery of the registered or certified mail, or the refusal or failure to sign the return receipt, does not affect the validity of delivery of the affidavit, and a filing party who refuses or fails to accept delivery of the registered or certified mail is charged with knowledge of the contents of the affidavit.

(e)

(1) Within twenty (20) business days of delivery of the affidavit to the filing party or refusal or failure to sign the return receipt, or notice by the United States postal service that the affidavit is undeliverable, a filing party who believes in good faith that the lien, encumbrances, or other document was filed with a reasonable basis or legal cause, may file an action seeking a determination in the chancery court of the county where the document was filed pursuant to title 29, chapter 14. The action must name the public official as an interested party in its caption.

(2) A petition filed pursuant to subdivision (e)(1) must set forth the factual basis showing that the filed lien, encumbrance, or other document was filed with a reasonable basis or legal cause, and must be accompanied by a cost bond in the amount of two hundred dollars (\$200).

(3) Any person who shares a property interest with the public official that is adversely affected by the filed lien, encumbrance, or other document may join in the action as an interested party.

(4) Following a reasonable period for responsive pleadings and discovery, the chancellor shall preside over a hearing at which proof may be offered on the issues raised and shall make a determination and issue a decree as to whether the lien, encumbrance, or other document was filed with any reasonable basis or legal cause at the close of the proceedings.

(f)

(1) If, within twenty (20) business days of delivery of the affidavit to the filing party under subdivision (d), a petition and cost bond has not been filed as required by subdivision (e)(2), the public official may file with the register a certification, signed by the public official under penalty of

perjury and verified by the clerk and master, stating that no petition has been filed.

(2) If the lien, encumbrance, or other document described in subdivision (b)(1) does not contain the name or address of the filing party, plaintiff, complainant, lienor, or owner of the lien, the public official may file with the register a certification, signed by the public official under penalty of perjury stating that the aforementioned name or address was not available.

(3) Any certification filed pursuant to subdivision (f)(1) or (f)(2) must include a recital designating the type of instrument, office, book, and page number of the instrument identifying the lien, encumbrance, or other document referenced in the affidavit filed pursuant to subdivision (b)(1) and shall serve as a release of the lien, encumbrance, or other document.

(g) If, following the hearing on a petition filed under subsection (e), the chancellor determines that there is reasonable basis or legal cause for the filing of the document, the filing party may file a final, unappealable court decree with the register, and the register shall remove the "Contested - Under Review" indication from the public records and the effectiveness of the lien, encumbrance, or other document must be reflected as the original date of filing.

(h) If, following the hearing on a petition filed under subsection (e), the chancellor determines that the lien, encumbrance, or other document was filed without any reasonable basis or legal cause, the public official may file a final, unappealable court decree with the register which shall serve as a release of the lien, encumbrance, or other document.

(i) The prevailing party in any action filed pursuant to subsection (e), including any person sharing a property interest with the public official, may recover costs and expenses, including reasonable attorneys' fees that are incurred in the action.

(j) Any governmental entity, as defined in § 29-20-102, may elect to insure or indemnify any public official for the cost of defending and removing liens, encumbrances, or other documents as described in this section, or any financing statements similarly filed and challenged pursuant to § 47-9-513(e), and for any other costs related to defending and removing a lien, encumbrance, or other document, but not including consequential damages. Any insurance or indemnification pursuant to this subsection (j) must be upon terms and conditions as the governmental entity establishes.

(k) This section providing for affidavits filed by public officials contesting liens, encumbrances, or other documents that reasonably constitute a cloud on the title of a real property interest does not apply to liens, encumbrances, or other documents if the originator, owner, or holder of the debt is any of the following:

(1) A state or national bank or trust company insured by the federal deposit insurance corporation or an operating subsidiary of such a bank or trust company;

(2) A state or federal credit union insured by the national credit union administration;

(3) A residential mortgage lender or an industrial loan and thrift company licensed by the Tennessee department of financial institutions;

(4) An entity regulated by the federal farm credit administration;

(5) The federal housing administration (FHA);

(6) A federal home loan bank;

(7) The federal national mortgage association (FannieMae);

- (8) The federal home loan mortgage corporation (FreddieMac);
- (9) The federal agricultural mortgage corporation (FarmerMac);
- (10) The veterans administration (VA); or
- (11) Any lien, encumbrance, or other document that is filed with the register, where the mortgage electronic registration system is listed as the nominee for the originator, owner, or holder of the debt.

SECTION 2. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2018, and shall apply to liens, encumbrances, or other documents, regardless of when filed, the public welfare requiring it.